

# REQUEST FOR COUNCIL ACTION

MEETING

DATE: 2/3/2003

55

AGENDA SECTION: Consent Agenda	ORIGINATING DEPT: Water Reclamation Plant	ITEM NO: D-18
ITEM DESCRIPTION: Voluntary Assessment for TMDL Lawsuit filed by CGMC		PREPARED BY: Lyle J. Zimmerman

In early January 2003 both the City Administration and the Coalition of Greater Minnesota Cities (CGMC) requested that Governor Pawlenty veto amendments to the Water Quality Assessment Rules which were being adopted by the Minnesota Pollution Control Agency. The Governor did not veto the amendments.

These amendments, commonly referred to as the Total Maximum Daily Loads (TMDL) rules may have a very adverse affect on Minnesota cities, businesses and farmers. The Water Quality Assessment Rules will dictate how water bodies are evaluated for impairment for their designated use, and then listing those in need of having TMDL's set for various pollutants. The rules as adopted are flawed and are being challenged by the CGMC through a lawsuit that is being filed on behalf of the member cities. CGMC believes the rules are:

1. Unconstitutionally vague
2. Overbroad
3. Arbitrary and capricious
4. Beyond the MPCA's regulatory authority

Since the rules are so vague it is difficult to anticipate exactly what impact they will have on the City of Rochester and in particular the discharge limits set for the Water Reclamation Plant. One area of particular concern is the amount of phosphorus the WRP may be allowed to discharge. The plant has had a limit of 1.0 mg/l for over 20 years and has been consistently meeting that limit for 15 years. Rochester was one of the first cities in the state to receive a phosphorus limit and many other cities are receiving that limit as their permits are renewed. There is a potential that the new rules, as adopted, may require the WRP to meet an even lower limit. In order to meet a lower limit the plant would be required to construct additional treatment processes which would be very expensive, and there would be a large increase in operational costs. These costs would all be passed on to the users of the WRP with a large portion having to be borne by the industrial users. A phosphorus TMDL may also require the city to adopt measures reducing phosphorus being discharged through storm water runoff.

The CGMC has requested that the member cities contribute to the funds being used to file a lawsuit against the MPCA and the rules as adopted. The voluntary assessment being request of the City of Rochester is \$10,000.

## **Council Action Requested:**

Approval to contribute \$10,000 out of the Sewer Utility Fund to the CGMC for the purpose of filing a lawsuit related to the TMDL rules as adopted.

**COUNCIL ACTION:** Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_ To: \_\_\_\_\_

54